

**AMENDED MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, May 17, 2007**

MEMBERS PRESENT: Tom McGuirk, Chairman
Robert V. Lessard
Jack Lessard (Alternate)
Bill O'Brien
Brian Provencal

OTHERS PRESENT: Kevin Schultz, Building Inspector
Shirley Doheny, Recording Secretary

The meeting began with the Pledge of Allegiance.

10-07 The continued petition of Harold Smalley, Jr. Trust, thru Richard Smalley, for property located at 32 Boars Head Terrace for relief from Articles 4.1.1, 4.5.1, 4.5.2 and 4.5.3 to allow construction of a new dwelling with less than the required setbacks (front, sides and rear). This property is located at Map 267, Lot 19 in a RA zone.

Chairman McGuirk announced that petition 15-07 has been withdrawn.

Henry Boyd from Millenium Engineering came forward with Mr. Smalley. Mr. Smalley has returned to the Board with house plans incorporating some of the suggestions of the Board. Mr. Boyd went through the criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

None

Back to the Board

Vic Lessard asked if the abutters had seen the plans. He was advised that they had. Mr. O'Brien confirmed that they were not proposing to change the lot. Mr. O'Brien stated that they were two feet from their neighbor's property with the stairs and suggested that they make it two feet from their own property. Mr. McGuirk asked why they had the outside stairs. Mr. Smalley stated that the stairs were in case of fire. It was suggested that the house be moved closer to the empty lot that they own. It was also suggested that they could do a mirror image of the floor plans. Chairman McGuirk confirmed that the Board was proposing the setback on the northerly side be five feet and the southerly side be two feet. Mr. O'Brien expressed concern about the size of the house on this lot.

Vic Lessard motioned that they reverse the house so that the larger setback is five feet from the southerly neighbor and the closer setback would be to their own lot, also that it will be a single family dwelling, seconded by Brian Provencal. Chairman McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Granted

15-07 The petition of Marjorie Lorde Cypres Trustee for property located at 471 Exeter Road seeking extension of variance granted on March 16, 2006 to allow construction of single family house on a 2.15 acre existing lot of record where there is not at least 30,000 contiguous square feet of buildable land outside of the wetlands conservation district, provided that a septic system is approved for the site by the NH DES. This property is located at Map 36, Lot 3 in a RAA zone.

Petition 15-07 withdrawn

16-07 The petition of James Gauthier for property located at 43 Ancient Highway seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to remodel existing home with new roof lines and rakes as well as remove the existing garage with roof and deck above and replace with new open patio area and screened porch above. This property is located at Map 134, Lot 37 in a RA zone.

Robert Dockham came forward on behalf James Gauthier. The existing property is already nonconforming due to setbacks. The homeowner wants to make the home better looking. He is removing a set of stairs on the right side of the building to alleviate parking off the road. The differences in the non-conformity from what now exist are the overhangs. He is also adding a window that bumps out approximately two feet. He went through the five criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

None

Back to the Board

Mr. McGuirk stated that the Board received a letter from the R. L. Moynihan stating that they had no objections assuming there is no increased water shed to the swale between the properties. Mr. O'Brien asked if the height of the structure would be changing. He also confirmed that the other small variances are strictly the overhang. Mr. McGuirk stated that the two foot bump out of the added window is not shown on the plan. The proposed deck is approximately 10 X 30.

Brian Provencal motioned to approve with the condition that no water shed on the neighbor's property, seconded by Jack Lessard. Chairman McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Granted

17-07 The petition of June White for property located at 8 River Avenue seeking relief from Articles 1.3, 4.51, 4.5.2 and 4.5.3 to add bedrooms to third floor, 3 bedrooms 1

bath, which were removed from first and second levels, currently only a sleeping loft exists on third level. To remain in current footprint of building outside 7 ft. setback. This property is located at Map 296, Lot 70 in a RB zone.

June White came forward. She stated that the property is currently nonconforming. She went through the five criteria as presented in the petition.

Questions from the Board

Vic Lessard asked if she would be tearing the building down. She is not. Mr. McGuirk read the deed restriction pertaining to the seven foot setback. The Board discussed this restriction. Mr. Schultz stated that the Board can grant the variance that the applicant is seeking but when the time comes to issue a building permit he cannot issue the building permit if it violates the deed restriction. The relief that can be granted on the deed restrictions can only be done at Town Meeting by an article on the Warrant. Ms. White stated that the Zoning Board had allowed relief from the seven foot deed restriction on previous occasions. Vic Lessard motioned to postpone this petition to the next meeting being first on the agenda. Kevin Schultz stated that one option would be if the Board approved the variances the applicant is seeking, the variances are good for two years. This would allow time to put an article before the Town Meeting without coming back to this Board. Mr. McGuirk stated that it is outside the scope of this Board to give opinions on deed restrictions. Brian Provencal seconded Mr. Lessard's earlier motion. Ms. White asked if the other variances could be approved so that she would have the option of going to the Town Attorney or pulling the structure back. Motion and second were withdrawn.

Comments from the audience

None

Back to the Board

Bill O'Brien motioned to approve the petition subject to the restrictions in the deed, seconded by Jack Lessard. Chairman McGuirk polled the Board regarding the five criteria.

Vote: 4-0-1 (McGuirk)

Motion Granted

18-07 The petition of Judith Ann Rogers for property located at 1 Crest Street seeking relief from Articles 1.3, 4.5.1 and 4.5.3 to construct a second floor full dormer over external existing roof line to align with first floor footprint that does not meet the setback requirements but does not extend beyond the footprint of the existing dwelling. This property is located at Map 223, Lot 60 in a RB zone.

Judith Rogers came forward with her contractor, Gerard. He went through the five criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

None

Back to the Board

Bill O'Brien stated that the fourteen feet setback shown to the property line is not the true setback. Bill O'Brien motioned to approve subject to a new plot plan being submitted to the building inspector showing the proper setbacks, seconded by Jack Lessard. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Granted

19-07 The petition of Richard & Lorraine Truchon for property located at 7 Ward Lane seeking relief from Articles 4.2, Footnote 22 and 2.5.4. This property is located at Map 164, Lot 3 in a RA zone.

Attorney Eileen Nevins came forward representing the Truchons along with Ernie Cote. This lot contains 18,330 sq. feet. Atty. Nevins went through the criteria as presented in the petition. Vic Lessard asked if this petition had been previously turned down. He expressed concern regarding land locking a piece of land. Mr. O'Brien stated that the tax map shows one lot and the plot plan shows two lots. Atty. Nevins stated that they are two separate lots that have never been merged.

Questions from the Board

None

Comments from the audience

Mary Louise Woolsey of 148 Little River Road expressed her strong support of this petition.

Paul Leary of 128 Little River Road came forward. He believes the piece of land in front should be left as a right of way.

Vic Lessard asked if it would be possible to get a driveway through Mr. Truchon's land without hurting his house. Mr. Truchon doesn't see how a driveway could come through without diminishing the lot he is trying to get a variance for. Mr. Leary presented the option of allowing the road to be open with the possibility of exchanging a lot with the Truchons.

Mary Louise Woolsey expressed concern about the aquifer. Vic Lessard stated that it would be better if there were sewer rather than septic.

Atty. Nevins requested that the Board consider this petition and whether it has met the requirements under Bocha. It was previously denied on the hardship factor. The law has now been changed.

Back to the Board

Chairman McGuirk motioned to approve subject to an agreeable strip of land that could be crossed to allow access to Lot 164-3A to be agreeable to both parties, seconded by Jack Lessard. This motion was withdrawn. Mr. O'Brien motioned to deny based on the substantial waivers being requested to the aquifer protection district ordinance in the use regulation area, seconded by Brian Provencal. Chairman McGuirk began to poll the Board

regarding the criteria. Attorney Nevins interrupted and asked that they be allowed to withdraw the petition. Mr. O'Brien's motion was withdrawn. Vic Lessard motioned to allow the petition to be withdrawn without prejudice, seconded by Brian Provencal.

Vote: 5-0

Motion to Withdraw granted

20-07 The petition of Blair MacLean, through Amanda MacKinnon, Esquire, for property located at 2 Overlook Street seeking Appeal of Building Code Decision under Article I and Article R, Section 105 of the IRC. This property is located at Map 223, Lot 72 in a RB zone.

Atty. Matthew Serge came forward representing Blair MacLean. Ms. MacLean bought the property with the intent to refurbish it. Her contractors began work without obtaining a building permit. A stop work order was issued. The contractors then went to the Building Department. They were told to fill out necessary paperwork and paid a double fee. In jacking up the property and modifying the structure prior to the stop work order, the building ended up ten inches into the right of way and one corner went into an abutter's property. The contractors agreed to put it back to the existing footprint and do a rehab of what is there. The contractors contacted the Building Department to see what they needed to do. It took some time to obtain the necessary paperwork.

Questions from the Board

Vic Lessard expressed concern about no permit being obtained. Mr. McGuirk asked if the owner had any intention of living in the property. She advised that she would be renting or selling the property. Mr. Lessard asked who was responsible for the building permit, the owner or the contractor. Mr. Schultz stated they would accept the application from either. Bill O'Brien motioned to table petition 20-07 until they hear the related petition 21-07, seconded by Brian Provencal

Vote: 5-0

Motion to table granted

21-07 The petition of Blair MacLean, through Amanda MacKinnon, Esquire, for property located at 2 Overlook Street seeking relief from Article 1.1 and 1.3 to obtain a Building Permit. This property is located at Map 223, Lot 72 in a RB zone.

Atty. Serge stated that he does not believe a variance is required because of a mistake in rehabbing the building. He went through the criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

Mary Murphy, 6 Emerald Ave stated that the building is on their land. There was damage to their back porch. She is very unhappy with the current situation. Her son also expressed his displeasure.

Geanne Snyder of 9 Crest Street stated that they assumed there was a permit. She would like to see things get moving and fix it the way it should be.

Mr. Murphy asked if this would be new construction. He believes they should have to meet the proper setbacks.

Ms. Snyder asked if it would be used year round. She also asked if the property could be moved back further on the lot.

Atty. Serge stated that it is their position that it is not new construction. Mr. McGuirk asked the clerk to read into the record a letter from Neal Parr. His letter expressed concern regarding safety issues.

Back to the Board

Jack Lessard thinks they should start from scratch. Brian Provencal agrees. Mr. O'Brien confirmed his understanding that they could be required to move the house to meet setbacks. Vic Lessard stated that ignorance is no excuse. He stated that dig safe should have been called. Mr. McGuirk asked if they had surveys showing where the house was and how tall the building was.

Vic Lessard motioned to deny the petition, seconded by Brian Provencal. Chairman McGuirk polled the Board regarding the five criteria. Vic Lessard does not believe that the criteria were met. Mr. O'Brien confirmed that if the Board voted the petition down, the applicant could come back and move the house trying to come closer to meeting some of the setbacks. Kevin stated that a new petition showing the building being relocated on the lot would be substantially different and could be heard. Mr. Schultz stated that they have a couple of options if the petition is denied. They could come back before this Board with a significantly different request or go to the Building Department and apply for an application to relocate the house meeting and conforming to all the zoning requirements.

Vote: 5-0

Motion Denied

Mr. Schultz requested that a temporary construction barrier be put around the construction. Ms. MacLean agreed to put up a fence to protect the area.

Returning to petition 20-07, Jack Lessard motioned to deny the building permit, seconded by Brian Provencal.

Vote: 5-0

Motion Denied

22-07 The petition of Aquarion Water Company for property located on Mill Road seeking a Special Exception under Article 3, as to 3.20, and Article 4.4 to replace existing water storage tank with a new water storage tank that exceeds the height dimensional requirements. This property is located at Map 145, Lot 18 in a RA zone.

Adam Torrey of Aquarion Water and Jenna Razza from Tata and Howard came forward. They are seeking to replace an existing water storage tank. Ms. Razza gave a description of the request. The proposed tank will benefit the entire community. The proposed storage tank will meet the systems storage requirements through the year 2025. They will use temporary fencing during construction for safety purposes.

Questions from the Board

None

Comments from the audience

Fred Fournier came forward and asked if the pump house would be moved. He expressed concern about the base. Ms. Razza advised that structural fill would be brought in for the foundation. There will be no blasting.

Back to the Board

Jack Lessard motioned to grant the special exception, seconded by Vic Lessard. Chairman McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Granted

23-07 The petition of Richard & Patricia Higgins for property located at 119 Kings Highway seeking relief from Articles 4.1.1, 4.5.1 and 4.5.2 to remove existing house and replace with a new one which slightly encroaches onto the front setback and encroaches onto the side setbacks. This property is located at Map 197, Lot 6 in a RA zone.

Peter Saari came forward with the builder Tim Mulcahey. They meet the rear setback entirely. The building is in keeping with the size of the buildings in the neighborhood. Atty. Saari went through the five criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

Jim Bennett of 5 Twelfth Street stated he has no problem with this project. Jack Lessard read a letter from Moira Reed-Conrad expressing concerns regarding removal of the paved area currently overlapping their lot.

Back to the Board

Vic Lessard asked if it would be a one family dwelling. He was advised that it is. Vic Lessard motioned to approve subject to it being a single family dwelling, not more than four bedrooms and not over 35 feet high. Mr. McGuirk asked if they would be putting a full stove in wet bar area on the roof. Mr. Higgins stated this would be an area for entertaining. The plan is to put a stove up there. Jack Lessard seconded the motion. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Granted

BUSINESS SESSION

Mr. McGuirk stated that they received an application from Joan Rice applying for the secretary position. Vic Lessard motioned to offer her the position, seconded by Bill O'Brien.

Vote: 5-0

Motion granted

Kevin explained a petition that was approved and appealed regarding the Victoria Inn. The court remanded it back to the Zoning Board. It needs to be put on the agenda as soon as possible and the petitioner needs to be notified that it has been placed on the agenda and that the petition is reopened.

Vic Lessard motioned that the petition be put first on the June agenda, seconded by Bill O'Brien.

Vote: 5-0

Motion granted

Mr. O'Brien requests that the Board discuss a new procedure to obtain ZBA approval when raising a house to put in a new foundation.

Motion to adjourn at 10:20